IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4973 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYPAL @ JAY @ JAGDISH LALCHAND TAKWANI SINDHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4973 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR SS PATEL, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 18/12/2001

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social

Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 5-6-2001 passed by the Police Commissioner, Ahmedabad City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and learned AGP. Also perused the material on record. It is submitted by the learned advocate for the petitioner that the authority has relied upon four offences registered against the detenu and last offence registered was on 10-5-2001 at Nashabandhi Police Station for passing the detention order which reflects from Annexure-B page 20. According to learned advocate for the petitioner, detenu has made a representation to the Government on 26-6-2001 demanding copies of specific documents which reflects on page 25 of the petition (Annexure-C) and same has been received by the authority on 27-6-2001, but copies were not supplied to the detenu through relied upon by the detaining authority and, therefore, it is a point which is required to be taken into consideration.

4. He has relied upon the case of Mohd. Zakir Vs. Delhi Administration and Ors., AIR 1982 S.C. 696 at head note as under:

> "Detention-Documents relied on by authorities not supplied with grounds of detention-Detention is illegal."

It has been further held by the Apex Court as under:

> "It is manifest that the question of demanding the documents is wholly irrelevant because it is the constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention pari passu the grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with."

5. It is the duty of the authority to supply copy of the statements and documents with the detention order.

Here in this case, though the detenu has demanded copies of specific documents by his representation, copies of the same were not supplied to him. Therefore, there is infraction of safeguards provided under the provisions of Art.22(5) of the Constitution of India and the petitioner has been deprived of knowing the grounds and making effective representation against the order of detention. No affidavit has been filed either of the authorities explaining satisfactorily the reasons for not supplying the copies to the detenu and justifying the action taken by them. It has been held in a judgment delivered by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

"Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detentiion is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

6. Since no affidavit has been filed either by the detaining authority or by the State authority justifying the action taken by the authorities, in view of the aforesaid judgments, the order of detention is bad and same cannot be sustained.

7. The petition is allowed. The impugned order of detention dated 5-6-2001 passed against the detenu is hereby quashed and set aside. The detenu Jaypal @ Jay Jagdish Lalchand Takwani Sindhi is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)
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